

COURT OF CHANCERY OF THE STATE OF DELAWARE

HANDBOOK

FOR

GUARDIANS

This handbook is for informational purposes only. It is not a substitute for legal advice which can only be given by an attorney.

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INTRODUCTION

(Words in **bold** are more fully explained in the text in this or the following pages)

You are considering being, or have been, appointed the guardian of a **disabled person**.

“Disabled person” means any person who (1) by reason of being under the age of 18 is legally unable to manage his or her property or make decisions concerning the care of his or her person; or (2) by reason of mental or physical incapacity is unable to manage or care for his or her person or property or both.

It is extremely important that a guardian realize that he, she or it is a **fiduciary** and must act accordingly. A “fiduciary” is one who holds something in trust for, or is entrusted to act on behalf of, another. This is a position with a high degree of responsibility. Everything the guardian does in that capacity must benefit the disabled person.

There are two basic types of guardianships: **guardian of the person** and **guardian of the property**. The word “property” is used in its broadest sense to mean all forms of assets, personal property and real estate, and the liabilities related to their management and ownership. The same person may be both guardian of the property and guardian of the person, or different individuals may be appointed as guardian of the person or property. Some disabled persons need only one kind of guardianship.

The **primary responsibilities of the guardian of the person** are described on pages 16 through 18. The **primary responsibilities of the guardian of the property** are described on pages 10 through 16. Public and private agencies can help you find the services you need.

All guardianships are created and subject to review by the Court of Chancery. Court is held in each county in Delaware. The office of the clerk of the Court of Chancery is known as the Register in Chancery, and the personnel in the Register in Chancery assist the Court in supervising

guardianships. Personnel in the Register in Chancery can provide you with some forms for the filing of petitions and accountings, but cannot provide legal advice. Your attorney plays a key role in the guardianship system. *If you have questions about your responsibilities as a guardian, ask your attorney first – not the judge* (in the Court of Chancery the “judge” is addressed as “Chancellor” or “Vice Chancellor”) *or the court employees*. The Court of Chancery may order payment of your attorney’s fees from the disabled person’s funds upon proper request.

You may be entitled to be reimbursed for reasonable expenses for the benefit of the disabled person. However, the Court may not approve payment of reimbursement unless:

- You keep records of the time spent on the guardianship, and
- You keep receipts for money you advance for the benefit of the disabled person (for example, bills you pay for the disabled person’s care.)

You may apply to the Court for commissions for acting as guardian. The commissions are determined in accordance with a formula set forth in Court of Chancery Rule 132. You can take commissions and reimbursements only after they are authorized by the Court.

You have the authority to make decisions for the disabled person, subject to the Court’s approval in most situations. But, you should make it a practice to discuss all major issues with:

- the disabled person, if possible;
- your attorney, and
- if appropriate, the disabled person’s family.

Failure to communicate is the cause of many disputes brought before the Court of Chancery. A few minutes of consultation may save many hours of later argument, the cost of legal fees and even a money judgment being entered against you.

The Court will require you to file an accounting and a report about the condition of the disabled person annually.

I. OBTAINING GUARDIANSHIP OF ADULTS WITH DIMINISHED MENTAL OR PHYSICAL CAPACITY

A. The Petition

In order to become a guardian, you must “petition” the Court of Chancery. You will probably need a lawyer to help you with this. Before seeing the lawyer you should:

1. Consult with a doctor who knows the alleged disabled person (hereinafter “disabled person”). Your attorney will need to obtain a written affidavit under oath giving the doctor’s opinion about these questions:

a. Is the disabled person unable, by reason of mental or physical incapacity, to manage or care for his or her property, or person, or both, and, in consequence thereof in danger of dissipating or losing such property or of becoming the victim of designing persons?

b. Is the disabled person in danger of substantially endangering his or her health, or of becoming subject to abuse by other persons or of becoming the victim of designing persons?

c. Is the disabled person impaired in a way that giving him or her a copy of your petition and notice of the hearing would be meaningless or detrimental to his or her health?

2. Obtain background information about the disabled person. You will need to know:

a. The disabled person’s age, marital status, and present location/residence.

b. If the disabled person is a patient or a resident of any hospital or institution, the date and circumstances surrounding the admission or entry into such institution.

c. The names and addresses of any spouse and next-of-kin. If any of the next-of-kin are minors, their approximate ages must be obtained.

d. Evidence of past or present military service.

e. If the disabled person has made a will or a power of attorney, where are they? Who the attorney-in-fact is (the person the disabled person appointed to handle his or her property).

f. Whether or not the disabled person had been represented by a Delaware attorney within the past two years, and, if so, the name of the attorney.

3. Prepare a list of the disabled person's property. You must include:

a. Real estate (land, houses, farms, beach property, other buildings) in Delaware or any other location. You should also be able to state the probable value and the estimated rental value of any real estate.

b. Money, stocks, bonds, furniture, antiques, coin or stamp collections, automobiles, boats, planes, other valuable property.

c. The disabled person's income from any source (pension, social security, dividends, mortgage payments, rents, royalties, or any other income).

d. The disabled person's debts and other obligations. This is to include expenses for such items as shelter, clothing, care and comfort.

e. All property, assets and accounts held jointly with the disabled person must be disclosed as to who the joint owner is, type of asset, where the asset is held and the value of such asset.

With all this information, your attorney can prepare the petition and the necessary attachments. One required attachment to the petition is the physician's statement referred to earlier.

B. Notice to the Disabled Person

After the petition is filed in the Court of Chancery, the alleged disabled person is entitled to be given notice of what is happening. If the doctor believed that the disabled person can understand the nature of the petition and that it would not be detrimental to the disabled person's health to be

told about the petition, an attorney whom the court has appointed to represent the disabled person (the “attorney *ad litem*”), will serve the disabled person with the petition or tell him or her about it. The attorney *ad litem*’s fee, set as a standard by the Court, is up to \$500. This fee is to be paid from the disabled person’s assets once the guardian has been appointed. If the petition for appointment of guardian is denied, the petitioner may be responsible for this payment. If a disabled person is indigent, an application to the Court may be made by the attorney *ad litem* for payment from a special fund.

There must be at least ten days’ notice (usually by certified mail) to the disabled person’s spouse and to next-of-kin who are at least eighteen years old, unless they have signed a notarized consent form. Any Delaware attorney who represented the alleged disabled person in the past two years must also receive notice.

C. Your Plan for the Guardianship

Judges prefer to approve a plan for the disabled person and the disabled person’s property which you have already discussed with your attorney. Therefore, you need to decide before filing the petition what you will do when you are the guardian.

If you are going to be guardian of the person you should have a plan for the disabled person’s care:

- where the disabled person will live
- who will provide care

If you are going to be guardian of the disabled person’s property you should consider:

- how you are going to control and invest the disabled person’s money and property.
- how you will keep track of the disabled person’s income and expenses.

Usually, the Court will expect you to manage the disabled person’s property under an Order which

your attorney writes, and the Court signs after approving your plan. Your attorney can guide you on what types of investments are permitted by the Court.

D. Getting a Bond

If you plan to manage the disabled person's property under the Court's supervision, you will be required to sign a bond equal to the value of the disabled person's property, but you will not necessarily have to obtain a surety (pay money to an insurance or bonding company for a bond to insure that you use the disabled person's property for the disabled person's benefit). Sometimes the guardian wants to manage some of the disabled person's property without having to get court approval for transactions; in that case, the guardian will be required to give a bond and a surety from a bonding company. The fee for the surety can be paid from the disabled person's estate, but the Court will look closely at the reason for spending the disabled person's money.

In determining whether to approve a bond, and whether to require a surety, the Court considers:

- the size and regularity of expenditures,
- the diversity of investments.

E. The Hearing

Usually you must attend the hearing where the Court considers your petition. (In some cases a hearing may not be necessary.) The judge may want you to answer questions about your petition, why you are seeking guardianship, or details of your guardianship plan.

When the Court receives a petition for guardianship of an alleged disabled person, the Court appoints an independent attorney to represent the disabled person. In this way, the judge protects the disabled person from anyone who might be seeking guardianship for improper reasons. The judge should not award a guardianship because the disabled person used poor business judgment, is

eccentric, or made unwise decisions. A guardianship of a mentally ill person may be appropriate, if the illness causes the person to be victimized or to neglect his or her health. The disabled person's attorney investigates whether the disabled person is incompetent and in need of a guardian, and gives the Court a written report. This attorney's fee may also be paid out of the disabled person's property, if the Court orders it.

F. The Formalities

If the Court approves your appointment, you must go to the Register in Chancery and sign the bond papers. There you will be given a certified copy of your appointment as guardian. (The bank frequently keeps this.) You may need additional copies of this later. Keep the certified copy safe; it is your official proof that you have the authority of a guardian. If you are going to establish a guardianship account at a bank, the Register in Chancery will also give you a form to give to the bank to return to the Register in Chancery to confirm the opening of the account.

The Register in Chancery will also expect you to complete a civil miscellaneous information sheet, identifying the disabled person and yourself. The Court may also require an affidavit from your attorney, if you are represented, stating that a copy of this handbook has been provided to you and your responsibilities reviewed with you.

II. OBTAINING GUARDIANSHIP OF MINORS

The process for creating guardianship for minor children is usually simpler than that for creating guardianships for adults. Most guardianship petitions for minor children are filed by parents or relatives when the child receives a personal injury award, or when the death of a parent or relative results in the child receiving life insurance proceeds or an inheritance. Because a child is under a legal incapacity (by being under the age of eighteen), the Court will not need to appoint counsel for the minor.

Although it is not necessary for the Court to appoint independent counsel for a minor child, the Court will inquire as to a child's preference for guardian if a child is fourteen years of age or over. Unless there is just cause to the contrary, the Court shall appoint the person preferred by the minor child.

In cases where the minor child has been injured, the settlement or award must be approved in the Court where the personal injury action was filed, either in Superior Court or in the Court of Common Pleas. A petition for guardian of the property must be filed simultaneously in Superior Court or in the Court of Common Pleas and the Court of Chancery. When the Superior Court or Court of Common Pleas approves the settlement and petition, notice is given to the Register in Chancery of its approval. The Register in Chancery then monitors the guardian of the property as it would any other guardianship, with a few exceptions. See responsibilities for guardians defined elsewhere in this Handbook.

As with adult guardianships, use of the funds from the minor's guardianship account must be approved by the Court. If the funds in the guardianship account are from a personal injury award, the Court will not permit a guardian to use the funds for everyday expenses such as food, clothing, shelter, school supplies, etc.. If, on the other hand, the funds in the guardianship account come from

insurance proceeds resulting from the death of one of the parents, the Court may permit the use of a portion of the funds for living expenses. However, the Court will a.) expect the guardian to apply for all public benefits available, such as social security, and b.) expect the surviving parent, pursuant to Delaware law, to support the child. Use of the funds from the public benefits is required before use of the funds in the guardianship account as a resource for the child(ren) is permitted.

Under normal circumstances, the Court does not permit withdrawals from a minor's account, and therefore it does not require accountings (after the inventory is filed). The term of a guardianship for a minor expires upon the death of the minor or upon the attainment of the age of eighteen years of age. When the guardianship is terminated, a petition must be filed to obtain an order to close the guardianship account and allow the distribution of funds. As part of the petition, it must be made clear the amount of the funds being transferred to the child (now adult) or to the child's estate.

III. YOUR RESPONSIBILITIES AS A GUARDIAN

In general, the Court expects you to act always in the disabled person's best interests. That means you should manage the disabled person's property for the disabled person's benefit, and provide care that will help the disabled person to live as comfortably and safely as possible within his or her means. You are not required to use your own money or property for the disabled person's needs, but you must do your best to provide proper care using the disabled person's own property.

A. THE PRIMARY FIDUCIARY RESPONSIBILITIES OF A GUARDIAN OF THE PROPERTY

It is extremely important that a guardian realize he, she or it is a fiduciary, and that the guardian act accordingly. A "fiduciary" is one who holds something in trust for, or is entrusted to act on behalf of, another. This is a position with a high degree of responsibility. All that the guardian does in that capacity must benefit the disabled person.

The primary fiduciary responsibilities of the guardian of the property are to (1) take control of the disabled person's property, (2) place the assets into a court-approved account, (3) ensure the assets are used for the benefit of the disabled person, and (4) report the receipts and the expenditures of the disabled person's property as required by the Court of Chancery.

More specifically, the guardian must locate assets of the disabled person and should clearly identify them as belonging to the disabled person and that he/she has a guardian. The guardian is required to place the funds into very conservative accounts, usually federally insured accounts only. Placement of funds into any other type of investment must be specifically approved by the Court of Chancery.

Payments from the disabled person's funds must be approved by Court order. The assets of

the disabled person are to be used only for his or her benefit. The guardian may be held personally liable for the misuse of the disabled person's funds, if they were not used for the benefit of the disabled person.

The Court of Chancery requires guardians to report all assets, debts, receipts and expenditures for the disabled person on a periodic basis (at the end of the first year of the guardianship, and annually thereafter). Failure to abide by each of the fiduciary responsibilities may subject the guardian to personal liability and other sanctions for failure to comply.

B. LOCATING AND PRESERVING ASSETS

1.) LOCATING ASSETS

As guardian you have a duty to locate all assets of the disabled person. You should carefully go through all the disabled person's papers and investigate any possible property the disabled person might own. It is often a wise idea to send a letter to all local banks to see if they have any accounts or safe deposit boxes for the disabled person at their institution. A standard form letter explaining that a guardian has been appointed by the Court and needs this information should bring a prompt reply from all of the local banks.

As guardian you have a responsibility to preserve and protect the assets. You must insure the property and secure it against loss from fire, theft, vandalism, etc. If you fail to do this you could be personally liable for any damage that occurs to the disabled person's property.

2.) FILING THE INVENTORY

The guardian must file an inventory of the assets of the disabled person within thirty (30) days of appointment. This is nothing more than a list of all the property of the disabled person which you know about. It must be signed in the presence of a notary and it must contain your sworn

statement that as the guardian you have made a diligent inquiry concerning the property and the estate of the disabled person and that the inventory contains all that has come to your knowledge. You should indicate the value of all property listed in the inventory. If after filing the inventory, you learn of or acquire additional property for the disabled person, you must file a supplemental inventory reporting the additional assets.

3.) BANK ACCOUNTS

As the guardian, you must place the funds of the disabled person in special Court of Chancery guardianship accounts. You can either close out the existing accounts and transfer them into the Court of Chancery guardianship account, or have the existing accounts retitled in the guardianship name. The Court requires all guardianship accounts to be titled as follows: "Court of Chancery Guardianship Account for John Doe, Mary Doe, Guardian". Most accounts also contain the caption "withdrawals only by order of the Court". When the guardianship is assumed, the Court will usually limit how much money can be withdrawn from the account without prior Court approval. If you need more than the set amount, you must file a petition with the Court and have it approved before additional funds can be withdrawn from the account.

4.) TAX RETURNS

As guardian you stand in the shoes of the disabled person and have the same responsibilities the disabled person normally would have. Therefore, if the disabled person is required to pay taxes, you are responsible to see that the tax return is prepared, signed and filed and the taxes paid. If taxes are due, you must petition the Court to approve the amount of the disabled person's funds needed to pay the taxes either as part of or in addition to the monthly allowance. If you need the assistance of an accountant or tax preparer, Court approval must be obtained to pay the accountant or tax preparer,

again, as part of or in addition to the monthly allowance. As long as the accountant or tax preparer agrees to the procedure, you can put the application for the payment of the accountant or tax preparer in the same petition as the request for funds to pay the taxes. Be sure to get an early start during the tax season.

5.) ACCOUNTING

(a) You are required to keep good records of the funds of the disabled person. An “accounting”, (a report on the disabled person’s property) must be sent to the Court at regular dates. The law requires you to file a first accounting within one year after being appointed guardian. After the first accounting, another accounting is required every year.

The Court can direct a guardian to account at any other time that it deems proper. An interested party (a relative or anyone also with a legitimate interest in the disabled person) may also request an accounting.

There are some exceptions to the requirement to account, but you will need Court approval of the exception. Examples of exceptions might be: 1) The disabled person has no assets and the only income is social security benefits handled by a representative payee (the representative payee must periodically account to the Social Security Administration); and 2) the disabled person is in a nursing home and has qualified for Medicaid (the disabled person has assets less than \$2,000 which are often handled by the nursing home in an escrow account). Also, as usually required by the Medicaid authorities, any income of the disabled person is directly paid to the nursing home to be applied to the cost of the care of the disabled person. In these situations, and other similar situations, upon petition of the guardian, the Court will often enter an order that the guardian does not have to file an annual accounting. If the requirement to file an annual accounting is waived, the Court will

usually still want an annual status report disclosing the addresses for guardian and disabled person.

(b) CONTENTS OF THE ACCOUNTING

The Chancery Court rules provide that there are several schedules to be provided for in an accounting. An accounting filed with the Court should have the following schedules:

(1.) Schedule showing the amount of principal (Assets) on hand at the time the Account begins and the manner of the investment of that principal. (Begin with the Inventory.)

(2.) The additions to principal, when made and the source from which they were obtained.

(3.) The investments collected and securities sold, the prices received for them, the time when collected or sold, and any loss or gain.

(4.) The investments made by the guardian, the security for them, the time when made and the price paid for any investments.

(5.) The deductions from principal, when made and for what purpose.

(6.) The income received, when received and from what source.

(7.) The income paid out, when paid, to whom and for what purpose.

(8.) The principal on hand at the time the account ends and the manner of the investment of that principal.

An affidavit must be filed with each accounting signed by the guardian, asserting that the account is just and true. All of the canceled checks showing payment of bills must be submitted when the account is filed. A statement of the names and addresses of interested parties must also be attached to the account. The Court then notifies the interested parties that an account has been filed and it gives the interested parties thirty (30) days to come to the Court and review the account and make any objections they may have to the account.

6. SECURITIES

A guardian is authorized to sell stock or exercise stock rights. Although not specifically required by law, it is the normal practice of the Court to approve the sale of stock. It is recommended that the guardian of the property file a petition with the Court seeking approval to sell the stock of a disabled person before taking that action.

7. SALE OF ASSETS

There are two basic categories of assets which may need to be sold to pay the disabled person's expenses. If it is necessary to sell personal property of the disabled person such as household contents, automobiles, etc., the guardian may be required to obtain permission of the Court for such a sale. The guardian should file a petition with the Court for approval before selling their assets. The Court will generally want to see an appraisal of the personal property to be sold, unless it is something that is going to be sold in bulk by an auctioneer. The petition should indicate how the property is to be sold, to whom it will be sold, and the amount for which it is to be sold. Petitions of this sort are filed with the Register in Chancery and presented to a judge of the Court for approval. The guardian or his or her attorney may need to appear in Court at a scheduled time to have this petition approved.

An application to sell real estate requires more documentation. When a petition is filed to sell real estate, the Court will appoint a licensed, certified appraiser of real estate to perform an appraisal within a specified period of time. The appraiser appointed shall be independent of the parties to the sale and disinterested in the transaction. The appraised value shall be used by the Court to establish the lowest price at which the property may be offered for sale, except in cases where the Court determines, based on good cause shown, that another sale price is appropriate. Notice of the

proposed sale needs to be sent by certified mail, return receipt requested, to the next-of-kin unless their consent is attached to the petition.

Real estate can be sold at public auction, but it is more often sold privately either by the guardian or by a real estate agent hired by the guardian. The final sale terms are subject to the Court's approval. When a firm contract offer is made for the purchase of the property, a copy of the contract is submitted to the Court with a draft order approving the sale. The real estate contract submitted to the Court should state that the contract is "subject to the approval of the Court of Chancery". If the Court finds that the contract proposes to sell the property at a fair price, which is approximately the same as or greater than the appraisal price, the petition will be approved.

8. HEALTH INSURANCE AND OTHER

As guardian, you should make sure the disabled person has appropriate health insurance. It is also your responsibility to investigate whether the disabled person will be eligible for government benefits which would assist in payment for food or health care services. The disabled person's eligibility for government benefits will be determined largely by the nature of his or her assets and income, and by his or her age and condition.

The Social Security program provides benefits to eligible persons on the basis of age, income, or disability. Applications for benefits may be filed at the local Social Security office. The disabled person may be eligible for additional health care related benefits through Medicare or the Medicaid programs. Medicare is a federal health insurance program, primarily providing benefits to those persons age 65 and older or disabled who paid into the Social Security system during their lifetimes. The Medicare program provides coverage of home health care and limited coverage of nursing home care. Medicare is administered through the local Social Security office. Medicaid is a state and federal program which provides coverage to eligible individuals for home health care or nursing

home care. Eligibility for these benefits is based on the nature of the disabled person's income, assets, and medical condition. As guardian, you should investigate whether the disabled person may be eligible for these benefits and take the necessary action to obtain them for the disabled person.

C. THE PRIMARY FIDUCIARY RESPONSIBILITIES AS GUARDIAN OF THE PERSON

Your role as guardian of the person will vary, depending on whether you are guardian of the person only or guardian of both person and property. If one person is guardian of the property while you are guardian of the person, you will need to work with the other guardian whenever decisions about the care of the person of the disabled person will require spending decisions. Although unlikely, in the event that the disabled person retains control of his or her property, you will have to cooperate with the disabled person when decisions involve both person and property.

As guardian of the person you should try to make decisions the way that the disabled person would have made them when he or she could make decisions. Whenever possible, you should try to discuss decisions with the disabled person. If you cannot determine what the disabled person would have wanted, you should make decisions that are based on the best interest of the disabled person, preserving the best possible quality of life for the disabled person.

You may need to decide where the disabled person will live. If the disabled person is moved after the guardianship has been approved by the Court, the Register in Chancery should be notified of the change of address. (The Register should also be advised if YOU change your address). You will also have the responsibility of ensuring that the disabled person's physical and emotional needs are met, whether in the disabled person's home or in a care facility.

You should also take steps to see that the disabled person is receiving the best possible

medical care. As guardian of the person you have the right to make health care decisions, including whether to withhold or withdraw life sustaining treatment, for the disabled person in consultation with the disabled person's physician, and if possible, the disabled person's family. These decisions are most difficult and must be made, if possible, in accordance with what the disabled person would decide if able. You should investigate whether the disabled person ever signed any health care directives or made oral statements about treatment wishes. If no information is available, you should make decisions that are in the best interest of the disabled person. As guardian of the person, you may be able to make decisions that are not specified in the Delaware Health-Care Decisions Act if you have evidence of the wishes of the disabled person.

If the disabled person is living at home, you may need to arrange for aides to provide housekeeping or nursing services, with the cooperation of the guardian of property, if necessary. If, for medical or financial reasons, the disabled person is unable to continue living in his or her residence, you will then need to secure an appropriate placement in a residential facility or a nursing home. You have the authority as guardian of the person to place the disabled person in another state with Court permission if that placement is in the best interest of the disabled person. Even when the disabled person is being placed in a care facility, it will be your responsibility to monitor the care there. You should endeavor to attend care conferences and to visit the facility regularly to review the disabled person's chart or records with the staff to ensure proper care is being provided and that the disabled person's rights are safeguarded. You should make sure that the person receives appropriate medical care, grooming, recreation, and social stimulation.

When you place a disabled person in a long-term care facility, you will be provided with a list of resident rights. In Delaware a resident of assisted living has the same rights that a resident of a nursing home has. It is your responsibility to study that list and to make sure that the disabled person

receives all the rights to which he or she is entitled. If you believe that the disabled person's rights are being violated or that the disabled person is subject to neglect or abuse, it is your responsibility to contact the long-term care ombudsman and/or the Division of Long-Term Care Resident's Protection.

A guardian must file a status report on the anniversary of the guardian's appointment. The annual statement should update the diagnosis, care, residence and status of the disabled person and address the need for a continued guardianship.

IV. DUTIES OF GUARDIAN UPON TERMINATION OF GUARDIANSHIP

The Court of Chancery may remove a guardian of a disabled person if it appears that the guardianship is no longer necessary. This may be done upon the application of the disabled person or any other person whom the Court deems to have sufficient interest in presenting such a petition. When a disabled person can show a sufficient ability to properly manage and control his or her property, the disabled person or any other interested party may file a petition with the Court asking for the termination of the guardianship and restoration of the custody and control of the disabled person's property and person to him or her. A physician's affidavit stating the "disabled person" no longer needs a guardian must accompany the petition to terminate.

When the petition is filed, the Court will provide notice to the guardian, spouse or next of kin of the disabled person, and other such interested parties as the Court may decide. Though not required to do so, the Court may conduct a hearing before making a final determination on the petition to terminate the guardianship. Should the Court find that the disabled person has recovered his or her health to the extent that he or she is capable of properly managing and caring for his or her own person and property, the Court will enter an order:

- A. Terminating the guardianship;
- B. Restoring to the former disabled person the property and estate which had been in the custody, possession and control of the guardian;
- C. Providing for the payment of costs and expenses incurred during the guardianship; and
- D. Requiring a full accounting from the guardian. A final accounting shall include a schedule of any proposed distribution of the principle of the guardianship and the name and address of each person then entitled to the property or a share or interest therein so that notice of the filing may be given to each by the Court or by public notice.

Upon the death of a disabled person, the guardian of the property should submit a petition to the Court to terminate the guardianship. Unless the Court waives the filing of a Final Account by the guardian, an Accounting should be submitted at or prior to the time of filing a Petition to Terminate the Guardianship. The Petition to Terminate should state the date of death of the disabled person, attach a copy of the death certificate, state the name of the personal representative of the estate of the disabled person, and seek approval to terminate the guardianship, cancel the bond of the guardian, and permission to distribute the funds remaining in the hands of the guardian to the personal representative of the estate of the disabled person. The guardian of the person should ask only for termination of the guardianship and cancellation of the bond after the death of the disabled person.

In the event that the guardian should die during the term of the guardianship, the personal representative of the estate of the guardian shall advise the Court of Chancery and the next of kin of the disabled person of the death of the guardian and thereafter assume the duties of the guardian until a successor guardian is appointed. The personal representative shall file a petition for the appointment of an appropriate successor guardian within 60 days of being appointed personal representative if no other interested party has filed such a petition. The personal representative shall render to the Court an account of the decedent's guardianship within three months of being appointed personal representative of the estate of the former guardian.

A guardian may resign if he or she files a petition with the Court and the Court agrees it would be proper to allow the resignation. If the Court allows the resignation, it will usually appoint a successor guardian. The resigning guardian must promptly provide an accounting and turn over all assets and effects to the successor guardian or to a receiver appointed by the Court.

V. MEDIATION

The Court of Chancery has a relatively new rule known as Rule 174.1 by which the vice chancellor shall require parties to mediate any disputes regarding guardianship matters. Mediation is a process by which an independent mediator assists two or more parties to a controversy in reaching a mutually acceptable resolution to the controversy. A mediator is appointed by the Court or selected by agreement of the parties to the controversy to assist them in resolving the matter. All parties with an interest in the issue or issues to be mediated and with authority to resolve the matter must participate in the mediation conference. Mediation conferences are private proceedings and are confidential. The mediator cannot be compelled to testify. Usually the parties share the cost of mediation equally.

If the parties reach an agreement to settle the controversy at mediation, an agreement shall be submitted to the Court. If the matter is not resolved by agreement, the mediator notifies the Court in writing that mediation has been concluded and an agreement has not been reached and the matter will then be scheduled for a hearing before a chancellor or master of the Court.

VI. GUARDIAN COMMISSIONS - RULES 131 AND 132

Chancery Court Rules 131 and 132 address the question of commissions to be paid for guardians. Rule 131 deals with commissions for fee-for-service guardians, that is, professional guardianship agencies approved by the Court to act as guardians. Fee-for-service guardians are required to keep records of time spent on the disabled person's behalf and submit periodic applications to the Court for approval of their commissions which are based on an hourly rate approved by the Court. The payment that is authorized by the Court in its discretion upon the application of the guardian requires notice to all interested parties, that is next of kin and others who are required to receive notice of guardianship filings with the Court.

Rule 132 is the commission rule for all other guardians. Under this rule, the Court permits income commissions and principal commissions. Annual income commissions are as follows:

- 6 % of the first \$20,000.00 of income;
- 3.5 % of the next \$10,000.00 of income;
- 3% of the next \$270,000.00 of income;
- 2% of all income over \$300,000.00.

Periodic principal commissions are allowed at the following annual rates:

- 5/10 of 1% of the first \$100,000.00 of principal;
- 3/10 of 1% of the next \$100,000.00 of principal;
- 2/10 of 1% of the next \$500,000.00 of principal;
- 1/10 of 1% of all principal over \$700,000.00.

Additional principal commissions are allowed upon distribution or termination of the guardianship pursuant to Chancery Court Rule 132(e).

Guardians are entitled to a minimum commission of \$400.00 for services in any one accounting year. All applications for commissions should be by petition to the Court. The petition should attach a calculation of the commissions and ask the Court for approval. After the petition is considered and approved by the Court, the guardian may then withdraw these approved funds from the account of the disabled person.